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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA

12 _____
13 CENTER FOR BIOLOGICAL DIVERSITY)
and SIERRA CLUB,)
14)
Plaintiffs/Petitioners,)
15)
vs.)
16)
CALIFORNIA DEPARTMENT OF)
17 CONSERVATION, DIVISION OF OIL,)
GAS, AND GEOTHERMAL RESOURCES;)
18 and DOES 1 through 100, inclusive,)
19 Defendants/Respondents.)

20 _____
21 WESTERN STATES PETROLEUM)
ASSOCIATION, CALIFORNIA)
INDEPENDENT PETROLEUM)
22 ASSOCIATION and INDEPENDENT OIL)
PRODUCERS AGENCY,)
23)
Respondents-in-Intervention.)
24)
25)
26)
27 _____

Case No. RG15769302

INDUSTRY GROUPS' REQUEST FOR
JUDICIAL NOTICE OF AGENCY
DOCUMENTS IN OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

Date: July 2, 2015
Time: 9:00 a.m.
Dept.: 17
Judge: Hon. George C. Hernandez, Jr.

Action Filed: May 7, 2015
Trial Date: None set

1 Pursuant to Evidence Code sections 450 *et seq.*, Respondents-in-Intervention
2 Western States Petroleum Association, California Independent Petroleum Association and
3 Independent Oil Producers Agency (collectively, “Industry Groups”) respectfully request
4 that this Court take judicial notice of the documents referenced below in support of Industry
5 Groups’ concurrently filed Memorandum of Points and Authorities in Opposition to Motion
6 for Preliminary Injunction. The documents are attached as exhibits to the concurrently filed
7 Declaration of Marley Degner in Support of Respondents-in-Interventions’ Opposition to
8 Motion for Preliminary Injunction (“Degner Declaration”). The Evidence Code mandates
9 judicial notice of matters that comport with the requirements of section 452, provided that
10 the requesting party gives adequate notice to adverse parties and includes sufficient
11 information to enable the Court to take judicial notice. Evid. Code, § 453. The documents
12 referenced in this request fall within the categories of documents appropriate for judicial
13 notice.

14 Section 452(c) provides that “[o]fficial acts of the legislative, executive, and judicial
15 departments” of the United States or any state may be judicially noticed. Documents issued
16 by a federal or state administrative agency are official acts of the executive department, of
17 which a court may take judicial notice. Courts regularly take judicial notice of letters,
18 rulemaking documents, resolutions, memoranda, press releases, reports and memoranda of
19 agreement that are created or issued by an agency. *See, e.g., Aguilar v. Atl. Richfield Co.*,
20 25 Cal. 4th 826, 855 n.3 (2001) (state agency report); *Friends of Sierra Madre v. City of*
21 *Sierra Madre*, 25 Cal. 4th 165, 186 n.15 (2001) (agency rulemaking files); *Landstar Global*
22 *Logistics, Inc. v. Robinson & Robinson, Inc.* 216 Cal. App. 4th 378, 388 n.4 (2013) (federal
23 agency letters); *Joyce v. Ford Motor Co.*, 198 Cal. App. 4th 1478, 1493 (2011) (press
24 release by state administrative department); *In re Soc. Servs. Payment Cases*, 166 Cal. App.
25 4th 1249, 1271 (2008) (state agency letters); *Curcini v. County of Alameda*, 164 Cal. App.
26 4th 629, 647 n.13 (2008) (memoranda of understanding); *Casella v. Sw. Dealer Servs. Inc.*,
27 157 Cal. App. 4th 1127, 1137 (2007) (article by state agency); *Rialto Police Benefit Ass’n*
28 *v. City of Rialto*, 155 Cal. App. 4th 1295, 1299 n.1 (2007) (memorandum of understanding);

1 *Rodas v. Spiegel*, 87 Cal. App. 4th 513, 518 (2001) (reports of administrative agencies);
2 *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 1285 n.3 (1999) (federal agency press release);
3 *Truta v. Avis Rent-A-Car Sys., Inc.*, 193 Cal. App. 3d 802, 809 n.6 (1987) (agency
4 memoranda), *superseded in non-relevant part by statute as recognized by Schnall v. Hertz*
5 *Corp.*, 78 Cal. App. 4th 1144, 1155 n.5 (2000); *People v. French*, 77 Cal. App. 3d 511, 521
6 n.12 (1978) (agency memorandum).

7 All of the exhibits attached to the Degner Declaration are administrative documents
8 and, thus, are appropriate documents for judicial notice. Exhibit A is a resolution passed by
9 an agency; Exhibit B is a memorandum of agreement between two agencies; Exhibits C, G,
10 H, I, J and M are agency letters; Exhibits D, E, K and L are rulemaking documents; Exhibit
11 F is an agency-issued report; Exhibit N is an agency-created memorandum; and Exhibits O,
12 P and Q are agency-issued press releases.) In particular, Industry Groups request judicial
13 notice of the following documents attached to the Degner Declaration:

14 **Exhibit A:** State Water Resources Control Board Resolution No. 88-63 “Sources
15 of Drinking Water” (May 19, 1998), as revised by Resolution No.
16 2006-0008 (February 1, 2006), *available at*
17 [http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolution](http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolutions/2006/rs2006_0008_rev_rs88_63.pdf)
18 [s/2006/rs2006_0008_rev_rs88_63.pdf](http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolutions/2006/rs2006_0008_rev_rs88_63.pdf).

19 **Exhibit B:** Underground Injection Control Program Memorandum of Agreement
20 Between California Division of Oil and Gas and Environmental
21 Protection Agency (“EPA”) Region 9, executed on September 29,
22 1982, *available at* [http://www.conservation.ca.gov/dog/](http://www.conservation.ca.gov/dog/for_operators/Documents/MOU-MOA/MOA_EPA_UIC_1982.pdf)
23 [for_operators/Documents/MOU-MOA/MOA_EPA_UIC_1982.pdf](http://www.conservation.ca.gov/dog/for_operators/Documents/MOU-MOA/MOA_EPA_UIC_1982.pdf).

24 **Exhibit C:** May 17, 1985 Letter from EPA, Region IX to Tom Cornwell,
25 Western Oil and Gas Association signed by Frank M. Covington,
26 Director, Water Management Division.

27 **Exhibit D:** California Division of Oil, Gas, and Geothermal Resources
28 (“DOGGR’s”) Revised Finding of Emergency for its Aquifer

1 Exemption Compliance Schedule Regulations, *available at*
2 [ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420%20](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420%20Revised%20Finding%20of%20Emergency%20for%20Aquifer%20Exemption%20Compliance%20Schedule%20Regulations.pdf)
3 [Revised%20Finding%20of%20Emergency%20for%20Aquifer%20](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420%20Revised%20Finding%20of%20Emergency%20for%20Aquifer%20Exemption%20Compliance%20Schedule%20Regulations.pdf)
4 [Exemption%20Compliance%20Schedule%20Regulations.pdf](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420%20Revised%20Finding%20of%20Emergency%20for%20Aquifer%20Exemption%20Compliance%20Schedule%20Regulations.pdf).

5 **Exhibit E:** DOGGR's Emergency Rulemaking Comment Response for its
6 Aquifer Exemption Compliance Schedule Regulations, *available at*
7 [ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150417%20](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150417%20AE%20Compliance%20Schedule%20Regulations%20-%20Comment%20Response.pdf)
8 [AE%20Compliance%20Schedule%20Regulations%20-](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150417%20AE%20Compliance%20Schedule%20Regulations%20-%20Comment%20Response.pdf)
9 [%20Comment%20Response.pdf](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150417%20AE%20Compliance%20Schedule%20Regulations%20-%20Comment%20Response.pdf).

10 **Exhibit F:** Excerpts from Horsley Witten Group's Final Report, titled
11 "California Class II Underground Injection Control Program
12 Review" and dated June 2011, *available at* [ftp://ftp.consrv.ca.gov/](ftp://ftp.consrv.ca.gov/pub/oil/uic%20files/fullreport.pdf)
13 [pub/oil/uic%20files/fullreport.pdf](ftp://ftp.consrv.ca.gov/pub/oil/uic%20files/fullreport.pdf).

14 **Exhibit G:** July 17, 2014 EPA Region IX Letter from Jared Blumenthal to Matt
15 Rodriquez, Secretary for Environmental Protection at California
16 Environmental Protection Agency ("CalEPA") and John Laird,
17 Secretary of the California Natural Resources Agency, *available at*
18 [http://www.epa.gov/region9/mediacenter/uic-review/pdf/epa-letter-](http://www.epa.gov/region9/mediacenter/uic-review/pdf/epa-letter-doggr-rodriquez-laird-2014-07-17.pdf)
19 [doggr-rodriquez-laird-2014-07-17.pdf](http://www.epa.gov/region9/mediacenter/uic-review/pdf/epa-letter-doggr-rodriquez-laird-2014-07-17.pdf).

20 **Exhibit H:** December 22, 2014 EPA Region IX Letter from Jane Diamond,
21 Director, Water Division, to Jonathan Bishop, Chief Deputy Director
22 of California State Water Resources Control Board ("SWRCB") and
23 Steven Bohlen, Oil and Gas Supervisor for DOGGR, *available at*
24 [ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/CA%20Class%20II%20](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/CA%20Class%20II%20UIC%20letter%20December%2022%202014.docx.PDF)
25 [UIC%20letter%20December%2022%202014.docx.PDF](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/CA%20Class%20II%20UIC%20letter%20December%2022%202014.docx.PDF).

26 **Exhibit I:** February 6, 2015 Letter from Steve Bohlen, State Oil and Gas
27 Supervisor for DOGGR, and Jonathan Bishop, Chief Deputy
28 Director, SWRCB, to Jane Diamond, Director of EPA Region IX's

1 Water Division, *available at* [ftp://ftp.consrv.ca.gov/pub/oil/](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/FINAL_Dual%20Letterhead_US%20EPA%20Letter.pdf)
2 UIC%20Files/FINAL_Dual%20Letterhead_US%20EPA%20
3 Letter.pdf.

4 **Exhibit J:** March 9, 2015 Letter from Jane Diamond, Director, Water Division,
5 EPA Region IX, to Jonathan Bishop, Chief Deputy Director,
6 SWRCB, and Steve Bohlen, State Oil and Gas Supervisor for
7 DOGGR, *available at* [http://www.conservation.ca.gov/dog/](http://www.conservation.ca.gov/dog/general_information/Documents/UIC%20-%20SDWA%20Compliance%20Ltr%203-9-15.pdf)
8 general_information/Documents/UIC%20-%20SDWA%20
9 Compliance%20Ltr%203-9-15.pdf.

10 **Exhibit K:** Text of Proposed Regulations for the Aquifer Exemption Compliance
11 Schedule Regulations and the Notice of Proposed Emergency
12 Rulemaking Action for the Aquifer Exemption Compliance Schedule
13 Regulations, dated April 2, 2015 and submitted to the State of
14 California Office of Administrative Law on April 9, 2015.

15 **Exhibit L:** Final Text of the Aquifer Exemption Compliance Schedule
16 Regulations, dated April 20, 2015, *available at*
17 [ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420.3%20Final](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420.3%20Final%20Text%20of%20Aquifer%20Exemption%20Compliance%20Schedule%20Emergency%20Regulations.pdf)
18 [%20Text%20of%20Aquifer%20Exemption%20Compliance%20](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420.3%20Final%20Text%20of%20Aquifer%20Exemption%20Compliance%20Schedule%20Emergency%20Regulations.pdf)
19 [Schedule%20Emergency%20Regulations.pdf](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/20150420.3%20Final%20Text%20of%20Aquifer%20Exemption%20Compliance%20Schedule%20Emergency%20Regulations.pdf).

20 **Exhibit M:** May 15, 2015 Letter from Steve Bohlen, Oil and Gas Supervisor for
21 DOGGR, and Jonathan Bishop, Chief Deputy Director, SWRCB, to
22 Michael Montgomery, EPA Region IX, *available at*
23 [ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/US%20EPA%205-15-](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/US%20EPA%205-15-2015%20Update.pdf)
24 [2015%20Update.pdf](ftp://ftp.consrv.ca.gov/pub/oil/UIC%20Files/US%20EPA%205-15-2015%20Update.pdf).

25 **Exhibit N:** March 2, 2015 CalEPA memorandum titled “MEMO: CalEPA
26 Review of UIC Program,” to Cliff Rechtschaffen, Senior Advisor of
27 Office of the Governor, and John Laird, Secretary of CNRA, titled
28 “CalEPA Review of UIC Program,” from Matthew Rodriquez,

Secretary of CalEPA, *available at* <http://www.calepa.ca.gov/Publications/Reports/2015/UICFindings.pdf>.

Exhibit O: April 2, 2015 Press Release issued by Department of Conservation, titled “California Department of Conservation Issues Notice of Emergency Regulations for Underground Injection,” *available at* <http://www.conservacion.ca.gov/index/news/Documents/2015-06%20UIC%20emergency%20regulations.pdf>.


Exhibit P: May 18, 2015 Press Release issued by Department of Conservation, titled “State Completes Initial Review of Underground Injection Wells, Reports to U.S. EPA,” *available at* <http://www.conservacion.ca.gov/index/news/Documents/2015-08%20State%20completes%20initial%20review%20of%20UIC%20wells.pdf>.

Exhibit Q: March 3, 2015 Press Release issued by Department of Conservation, titled “Calif. Division of Oil, Gas, and Geothermal Resources Seeks End to Injection in Kern, Tulare County Wells,” *available at* <http://www.conservacion.ca.gov/index/news/Documents/2015-03%20Division%20of%20Oil,%20Gas,%20and%20Geothermal%20Resources%20orders%20UIC%20wells%20shut%20in.pdf>.

Dated: June 19, 2015.

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By


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PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

I, Lilia H. Jackson, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My email and business addresses are lilia.jackson@pillsburylaw.com; Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998. My mailing address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94126-2824.

3. On June 19, 2015, at Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998, I served a true copy of the attached document titled exactly

**INDUSTRY GROUPS' REQUEST FOR JUDICIAL NOTICE OF AGENCY
DOCUMENTS IN OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTION**

by sending it via electronic transmission to the following persons at the electronic-mail addresses so indicated:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of June, 2015, at San Francisco, California.

Lilia H. Jackson